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Dahon & Hon Industrial Labs, Ltd.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAHON NORTH AMERICA, INC., a
California corporation

Plaintiff,

v.

JOSHUA HON, an individual,
FLORENCE HON, an individual,
MOBILITY HOLDINGS, LTD., a Hong
Kong company, MOBILITY
HOLDINGS, LTD. (TAIWAN
BRANCH) (previously identified as Tern
Bicycles), a Taiwan company, STILE
PRODUCTS, INC., a California
corporation, STEVE BOYD, an
individual, and nominal defendant
DAHON & HON INDUSTRIAL LABS,
LTD., a Taiwan company,

Defendants.

Case No. 2:11-cv-05835 ODW

PROTECTIVE ORDER

The Honorable Otis D. Wright, II

1 DAHON & HON INDUSTRIAL LABS,
2 LTD., a Taiwanese company, STILE
3 PRODUCTS, INC., a California
4 corporation, JOSHUA HON, an
5 individual, FLORENCE HON, an
6 individual, MOBILITY HOLDINGS,
7 LTD., a Hong Kong company, and
8 MOBILITY HOLDINGS LTD
(TAWAIN), a Taiwan company,

Counterclaimants.

vs.

10 DR. DAVID HON, an individual,
11 DAHON TECHNOLOGIES, LTD., a
12 Chinese company, and DAHON NORTH
13 AMERICA INC., a California
14 corporation,

Counterdefendants.

16 1. PURPOSES AND LIMITATIONS

17 Disclosure and discovery activity in this action are likely to involve
18 production of confidential, proprietary, or private information for which special
19 protection from public disclosure and from use for any purpose other than
20 prosecuting this litigation may be warranted. Accordingly, the parties hereby
21 stipulate to and petition the court to enter the following Stipulated Protective Order.
22 The parties acknowledge that this Order does not confer blanket protections on all
23 disclosures or responses to discovery and that the protection it affords from public
24 disclosure and use extends only to the limited information or items that are entitled
25 to confidential treatment under the applicable legal principles. The parties further
26 acknowledge, as set forth in Section 14.4 below, that this Stipulated Protective
27 Order does not entitle them to file confidential information under seal; Civil Local
28

1 Rule 79-5 and General Order 62 set forth the procedures that must be followed and
2 the standards that will be applied when a party seeks permission from the court to
3 file material under seal.

4 **2. DEFINITIONS**

5 2.1 Challenging Party: a Party or Non-Party that challenges the
6 designation of information or items under this Order.

7 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House
11 Counsel (as well as their support staff).

12 2.4 Designated House Counsel: House Counsel who seek access to
13 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this
14 matter.

15 2.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
18 ONLY."

19 2.6 Disclosure or Discovery Material: all items or information, regardless
20 of the medium or manner in which it is generated, stored, or maintained (including,
21 among other things, testimony, transcripts, and tangible things), that are produced
22 or generated in disclosures or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who (1) has been retained by a Party or its counsel to
25 serve as an expert witness or as a consultant in this action, (2) is not a past or
26 current employee of a Party or of a Party's competitor, and (3) at the time of
27 retention, is not anticipated to become an employee of a Party or of a Party's
28 competitor.

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1 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

2 Information or Items: extremely sensitive “Confidential Information or Items,”
3 disclosure of which to another Party or Non-Party would create a substantial risk of
4 serious harm that could not be avoided by less restrictive means.

5 2.9 INTENTIONALLY LEFT BLANK.

6 2.10 House Counsel: attorneys who are employees of a party to this action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.11 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.12 Outside Counsel of Record: attorneys who are not employees of a
12 party to this action but are retained to represent or advise a party to this action and
13 have appeared in this action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party.

15 2.13 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this action.

20 2.15 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.16 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY.” (or the shortened designation, “ATTORNEY’S
27 EYES ONLY”).

28 2.17 Receiving Party: a Party that receives Disclosure or Discovery

1 Material from a Producing Party.

2 3. SCOPE

3 The protections conferred by this Stipulation and Order cover not only
4 Protected Material (as defined above), but also (1) any information copied or
5 extracted from Protected Material; (2) all copies, excerpts, summaries, or
6 compilations of Protected Material; and (3) any testimony, conversations, or
7 presentations by Parties or their Counsel that might reveal Protected Material.

8 However, the protections conferred by this Stipulation and Order do not cover the
9 following information: (a) any information that is in the public domain at the time
10 of disclosure to a Receiving Party or becomes part of the public domain after its
11 disclosure to a Receiving Party as a result of publication not involving a violation
12 of this Order, including becoming part of the public record through trial or
13 otherwise; and (b) any information known to the Receiving Party prior to the
14 disclosure or obtained by the Receiving Party after the disclosure from a source
15 who obtained the information lawfully and under no obligation of confidentiality to
16 the Designating Party. Any use of Protected Material at trial shall be governed by a
17 separate agreement or order.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations
20 imposed by this Order shall remain in effect until a Designating Party agrees
21 otherwise in writing or a court order otherwise directs. Final disposition shall be
22 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
23 or without prejudice; and (2) final judgment herein after the completion and
24 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
25 including the time limits for filing any motions or applications for extension of time
26 pursuant to applicable law.

27 5. DESIGNATING PROTECTED MATERIAL

28 5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains protected material. For purposes of this Protective Order, a party may shorten the designation of "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" to

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1 “ATTORNEY’S EYES ONLY” at that party’s option. If only a portion or portions
2 of the material on a page qualifies for protection, the Producing Party also must
3 clearly identify the protected portion(s) (e.g., by making appropriate markings in
4 the margins) and must specify, for each portion, the level of protection being
5 asserted.

6 A Party or Non-Party that makes original documents or materials available
7 for inspection need not designate them for protection until after the inspecting Party
8 has indicated which material it would like copied and produced. During the
9 inspection and before the designation, all of the material made available for
10 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY.” After the inspecting Party has identified the documents it wants copied
12 and produced, the Producing Party must determine which documents, or portions
13 thereof, qualify for protection under this Order. Then, before producing the
14 specified documents, the Producing Party must affix the appropriate legend
15 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY”) to each page that contains Protected Material. If only a portion or portions
17 of the material on a page qualifies for protection, the Producing Party also must
18 clearly identify the protected portion(s) (e.g., by making appropriate markings in
19 the margins) and must specify, for each portion, the level of protection being
20 asserted.

21 (b) for testimony given in deposition or in other pretrial or trial proceedings,
22 that the Designating Party identify on the record, before the close of the deposition,
23 hearing, or other proceeding, all protected testimony and specify the level of
24 protection being asserted. When it is impractical to identify separately each portion
25 of testimony that is entitled to protection and it appears that substantial portions of
26 the testimony may qualify for protection, the Designating Party may invoke on the
27 record (before the deposition, hearing, or other proceeding is concluded) a right to
28 have up to 21 days to identify the specific portions of the testimony as to which

1 protection is sought and to specify the level of protection being asserted. Only those
2 portions of the testimony that are appropriately designated for protection within the
3 21 days shall be covered by the provisions of this Stipulated Protective Order.

4 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
5 afterwards if that period is properly invoked, that the entire transcript shall be
6 treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
7 EYES ONLY."

8 Parties shall give the other parties notice if they reasonably expect a
9 deposition, hearing, or other proceeding to include Protected Material so that the
10 other parties can ensure that only authorized individuals who have signed the
11 "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present at those
12 proceedings. The use of a document as an exhibit at a deposition shall not in any
13 way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
14 – ATTORNEYS' EYES ONLY."

15 Transcripts containing Protected Material shall have an obvious legend on
16 the title page that the transcript contains Protected Material, and the title page shall
17 be followed by a list of all pages (including line numbers as appropriate) that have
18 been designated as Protected Material and the level of protection being asserted by
19 the Designating Party. The Designating Party shall inform the court reporter of
20 these requirements. Any transcript that is prepared before the expiration of a 21-day
21 period for designation shall be treated during that period as if it had been designated
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless
23 otherwise agreed. After the expiration of that period, the transcript shall be treated
24 only as actually designated.

25 (c) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place on the
27 exterior of the container or containers in which the information or item is stored the
28 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'

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1 EYES ONLY ” (or the shortened version, “ATTORNEY’S EYES ONLY). If only
 2 a portion or portions of the information or item warrant protection, the Producing
 3 Party, to the extent practicable, shall identify the protected portion(s) and specify
 4 the level of protection being asserted.

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 6 failure to designate qualified information or items does not, standing alone, waive
 7 the Designating Party’s right to secure protection under this Order for such
 8 material. Upon timely correction of a designation, the Receiving Party must make
 9 reasonable efforts to assure that the material is treated in accordance with the
 10 provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 13 designation of confidentiality at any time. Unless a prompt challenge to a
 14 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
 15 substantial unfairness, unnecessary economic burdens, or a significant disruption or
 16 delay of the litigation, a Party does not waive its right to challenge a confidentiality
 17 designation by electing not to mount a challenge promptly after the original
 18 designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 20 resolution process by providing written notice of each designation it is challenging
 21 and describing the basis for each challenge. To avoid ambiguity as to whether a
 22 challenge has been made, the written notice must recite that the challenge to
 23 confidentiality is being made in accordance with this specific paragraph of the
 24 Protective Order. The parties shall attempt to resolve each challenge in good faith
 25 and must begin the process by conferring directly (in voice to voice dialogue; other
 26 forms of communication are not sufficient) within 14 days of the date of service of
 27 notice. In conferring, the Challenging Party must explain the basis for its belief that
 28 the confidentiality designation was not proper and must give the Designating Party

1 an opportunity to review the designated material, to reconsider the circumstances,
2 and, if no change in designation is offered, to explain the basis for the chosen
3 designation. A Challenging Party may proceed to the next stage of the challenge
4 process only if it has engaged in this meet and confer process first or establishes
5 that the Designating Party is unwilling to participate in the meet and confer process
6 in a timely manner.

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
8 court intervention, the Designating Party shall file and serve a motion to retain
9 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
10 79-5 and General Order 62, if applicable) within 21 days of the initial notice of
11 challenge or within 14 days of the parties agreeing that the meet and confer process
12 will not resolve their dispute, whichever is earlier. Each such motion must be
13 accompanied by a competent declaration affirming that the movant has complied
14 with the meet and confer requirements imposed in the preceding paragraph. Failure
15 by the Designating Party to make such a motion including the required declaration
16 within 21 days (or 14 days, if applicable) shall automatically waive the
17 confidentiality designation for each challenged designation. In addition, the
18 Challenging Party may file a motion challenging a confidentiality designation at
19 any time if there is good cause for doing so, including a challenge to the
20 designation of a deposition transcript or any portions thereof. Any motion brought
21 pursuant to this provision must be accompanied by a competent declaration
22 affirming that the movant has complied with the meet and confer requirements
23 imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the
25 Designating Party. Frivolous challenges and those made for an improper purpose
26 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
27 expose the Challenging Party to sanctions. Unless the Designating Party has waived
28 the confidentiality designation by failing to file a motion to retain confidentiality as

described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants,
5 and Professional Vendors to whom disclosure is reasonably necessary for this
6 litigation and who have signed the “Acknowledgment and Agreement to Be
7 Bound” (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the “Acknowledgment and Agreement
10 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
11 ordered by the court. Pages of transcribed deposition testimony or exhibits to
12 depositions that reveal Protected Material must be separately bound by the court
13 reporter and may not be disclosed to anyone except as permitted under this
14 Stipulated Protective Order.

15 (g) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information.

17 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
19 writing by the Designating Party, a Receiving Party may disclose any information
20 or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
21 only to:

22 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
23 as employees of said Outside Counsel of Record to whom it is reasonably necessary
24 to disclose the information for this litigation and who have signed the
25 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
26 A;

27 (b) Designated House Counsel of the Receiving Party (1) who has no
28 involvement in competitive decision-making, (2) to whom disclosure is reasonably

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1 necessary for this litigation, (3) who has signed the "Acknowledgment and
 2 Agreement to Be Bound" (Exhibit A), and (4) as to whom the procedures set forth
 3 in paragraph 7.4(a)(1), below, have been followed;

4 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
 5 necessary for this litigation, (2) who have signed the "Acknowledgment and
 6 Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth
 7 in paragraph 7.4(a)(2), below, have been followed;

8 (d) the court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants,
 10 and Professional Vendors to whom disclosure is reasonably necessary for this
 11 litigation and who have signed the "Acknowledgment and Agreement to Be
 12 Bound" (Exhibit A); and

13 (f) the author or recipient of a document containing the information or a
 14 custodian or other person who otherwise possessed or knew the information.

15 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY
 16 CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items to
 17 Designated House Counsel or Experts.

18 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
 19 Designating Party, a Party that seeks to disclose to Designated House Counsel any
 20 information or item that has been designated "HIGHLY CONFIDENTIAL –
 21 ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(b) first must make a
 22 written request to the Designating Party that (1) sets forth the full name of the
 23 Designated House Counsel and the city and state of his or her residence and (2)
 24 describes the Designated House Counsel's current and reasonably foreseeable
 25 future primary job duties and responsibilities in sufficient detail to determine if
 26 House Counsel is involved, or may become involved, in any competitive decision-
 27 making.

28 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the

Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement

¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 is reached, the Party seeking to make the disclosure to Designated House Counsel
2 or the Expert may file a motion as provided in Civil Local Rule 7 (and in
3 compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking
4 permission from the court to do so. Any such motion must describe the
5 circumstances with specificity, set forth in detail the reasons why disclosure to
6 Designated House Counsel or the Expert is reasonably necessary, assess the risk of
7 harm that the disclosure would entail, and suggest any additional means that could
8 be used to reduce that risk. In addition, any such motion must be accompanied by a
9 competent declaration describing the parties' efforts to resolve the matter by
10 agreement (i.e., the extent and the content of the meet and confer discussions) and
11 setting forth the reasons advanced by the Designating Party for its refusal to
12 approve the disclosure.

13 In any such proceeding, the Party opposing disclosure to Designated
14 House Counsel or the Expert shall bear the burden of proving that the risk of harm
15 that the disclosure would entail (under the safeguards proposed) outweighs the
16 Receiving Party's need to disclose the Protected Material to its Designated House
17 Counsel or Expert.

18 8. PROSECUTION BAR

19 Absent written consent from the Producing Party, any individual who
20 receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
21 information shall not be involved in the prosecution of patents or patent
22 applications relating to [insert subject matter of the invention and of highly
23 confidential technical information to be produced], including without limitation the
24 patents asserted in this action and any patent or application claiming priority to or
25 otherwise related to the patents asserted in this action, before any foreign or
26 domestic agency, including the United States Patent and Trademark Office ("the
27 Patent Office"). For purposes of this paragraph, "prosecution" includes directly or
28 indirectly drafting, amending, advising, or otherwise affecting the scope or

1 maintenance of patent claims.² To avoid any doubt, “prosecution” as used in this
 2 paragraph does not include representing a party challenging a patent before a
 3 domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte*
 4 reexamination or *inter partes* reexamination). This Prosecution Bar shall begin
 5 when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
 6 information is first received by the affected individual and shall end two (2) years
 7 after final termination of this action.

8 9. INTENTIONALLY LEFT BLANK

9 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 10 IN OTHER LITIGATION

11 If a Party is served with a subpoena or a court order issued in other litigation
 12 that compels disclosure of any information or items designated in this action as
 13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 14 ONLY” that Party must:

15 (a) promptly notify in writing the Designating Party. Such notification
 16 shall include a copy of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or order
 18 to issue in the other litigation that some or all of the material covered by the
 19 subpoena or order is subject to this Protective Order. Such notification shall include
 20 a copy of this Stipulated Protective Order; and

21 (c) cooperate with respect to all reasonable procedures sought to be
 22 pursued by the Designating Party whose Protected Material may be affected.³

23 If the Designating Party timely seeks a protective order, the Party served with
 24 the subpoena or court order shall not produce any information designated in this
 25 _____

26 ² Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to
 28 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from
 which the subpoena or order issued.

1 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY” before a determination by the court from which the subpoena or
3 order issued, unless the Party has obtained the Designating Party’s permission. The
4 Designating Party shall bear the burden and expense of seeking protection in that
5 court of its confidential material – and nothing in these provisions should be
6 construed as authorizing or encouraging a Receiving Party in this action to disobey
7 a lawful directive from another court.

8 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
9 PRODUCED IN THIS LITIGATION

10 (a) The terms of this Order are applicable to information produced by a
11 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by
13 Non-Parties in connection with this litigation is protected by the remedies and relief
14 provided by this Order. Nothing in these provisions should be construed as
15 prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
17 produce a Non-Party’s confidential information in its possession, and the Party is
18 subject to an agreement with the Non-Party not to produce the Non-Party’s
19 confidential information, then the Party shall:

20 1. promptly notify in writing the Requesting Party and the Non-
21 Party that some or all of the information requested is subject to a confidentiality
22 agreement with a Non-Party;

23 2. promptly provide the Non-Party with a copy of the Stipulated
24 Protective Order in this litigation, the relevant discovery request(s), and a
25 reasonably specific description of the information requested; and

26 3. make the information requested available for inspection by the
27 Non-Party.
28

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.⁴ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for

⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 production without prior privilege review. Pursuant to Federal Rule of Evidence
2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
3 of a communication or information covered by the attorney-client privilege or work
4 product protection, the parties may incorporate their agreement in the stipulated
5 protective order submitted to the court.

6 14. MISCELLANEOUS

7 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the court in the future.

9 14.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in
12 this Stipulated Protective Order. Similarly, no Party waives any right to object on
13 any ground to use in evidence of any of the material covered by this Protective
14 Order.

15 14.3 Export Control. Disclosure of Protected Material shall be subject to all
16 applicable laws and regulations relating to the export of technical data contained in
17 such Protected Material, including the release of such technical data to foreign
18 persons or nationals in the United States or elsewhere. The Producing Party shall be
19 responsible for identifying any such controlled technical data, and the Receiving
20 Party shall take measures necessary to ensure compliance.

21 14.4 Filing Protected Material. Without written permission from the
22 Designating Party or a court order secured after appropriate notice to all interested
23 persons, a Party may not file in the public record in this action any Protected
24 Material. A Party that seeks to file under seal any Protected Material must comply
25 with Civil Local Rule 79-5 and General Order 62. Protected Material may only be
26 filed under seal pursuant to a court order authorizing the sealing of the specific
27 Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order
28 62, a sealing order will issue only upon a request establishing that the Protected

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1 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
2 protection under the law. If a Receiving Party's request to file Protected Material
3 under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by
4 the court, then the Receiving Party may file the Protected Material in the public
5 record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the
6 court.

7 15. FINAL DISPOSITION

8 Within 60 days after the final disposition of this action, as defined in
9 paragraph 4, each Receiving Party must return all Protected Material to the
10 Producing Party or destroy such material. As used in this subdivision, "all Protected
11 Material" includes all copies, abstracts, compilations, summaries, and any other
12 format reproducing or capturing any of the Protected Material. Whether the
13 Protected Material is returned or destroyed, the Receiving Party must submit a
14 written certification to the Producing Party (and, if not the same person or entity, to
15 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
16 appropriate) all the Protected Material that was returned or destroyed and (2)
17 affirms that the Receiving Party has not retained any copies, abstracts,
18 compilations, summaries or any other format reproducing or capturing any of the
19 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
20 archival copy of all pleadings, motion papers, trial, deposition, and hearing
21 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
22 reports, attorney work product, and consultant and expert work product, even if
23 such materials contain Protected Material. Any such archival copies that contain or
24 constitute Protected Material remain subject to this Protective Order as set forth in
25 Section 4 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: 6/11/12

Voum R. Christen
Attorneys for Plaintiffs and
Counterdefendants

4
5
6 DATED: 6/11/12

Ken Keller
Attorneys for Defendants and
Counterclaimants

7
8
9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

10
11 DATED: 6-11-2012

William D. Wright, II
The Honorable Otis D. Wright, II
United States District Judge